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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/444,281 | 11/19/1999 | JAN BURIAN | 660081.411 | 8461 |
| 500 | 7590 | 02/09/2004 | EXAMINER | |
| SEED INTELLECTUAL PROPERTY LAW GROUP PLLC | | | SCHNIZER, HOLLY G | |
| 701 FIFTH AVE | | | ART UNIT | PAPER NUMBER |
| SUITE 6300 | | | | |
| SEATTLE, WA 98104-7092 | | | 1653 | |

DATE MAILED: 02/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------|------------------------|---------------------|
| Advisory Action | Application No. | Applicant(s) |
| | 09/444,281 | BURIAN ET AL. |
| | Examiner | Art Unit |
| | Holly Schnizer | 1653 |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 23 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) The period for reply expires 3 months from the mailing date of the final rejection.
- b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. The proposed amendment(s) will not be entered because:
 - (a) they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) they raise the issue of new matter (see Note below);
 - (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1, 2, 4, 12, 13, 15-18, 20, 29, 31, 32, 35-37, 40-42, 44, 45, 47-67.

Claim(s) withdrawn from consideration: _____.

8. The drawing correction filed on _____ is a) approved or b) disapproved by the Examiner.

9. Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.

10. Other: _____.

HS
Holly Schnizer


CHRISTOPHER S. F. LOW
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

Continuation of 2. NOTE: the claims have been broadened from constructs including only indolicidin analogs to constructs containing any cationic peptide sequence. Indolicidin is characterized by its length and the number of tryptophans and prolines whereas the cationic peptides now claimed may have any length and sequence as long as they have 30% tryptophans. Thus, a further search of cationic amino acid sequences that may be much longer and much less similar to Indolicidin than an analog would be required.

Continuation of 3. Applicant's reply has overcome the following rejection(s): 35 U.S.C. 112, second paragraph and 35 U.S.C. 102(a) as anticipated by Fraser et al. and 35 U.S.C. 102(e) as being anticipated by Krieger et al. and 35 U.S.C. 103(a) as obvious over Fraser et al. or Krieger et al. in view of Zhang et al. and over Fraser et al. in view of Shen et al., Stratagene Catalog, the Pharmacia Catalog, and Sambrook et al..

Continuation of 5. does NOT place the application in condition for allowance because: it broadens the scope of the claim and thus raises new issues that would require further consideration and search. Indolicidin is characterized by its length and the number of tryptophans and prolines whereas the cationic peptides now claimed encompass any length or sequence as long as they have 30% tryptophans and have an overall positive charge. Thus, a further search of cationic amino acid sequences that may be much longer or shorter and much less similar to Indolicidin than an analog would be required. In addition, the new claims would be obvious over Lee et al. (Prot. Exp. and Purif. (1998) 12: 53-60 who teaches a construct of anionic peptide [(cleavage site)-(cationic peptide)-cleavage site)-(anionic peptide)]n (cationic peptide) can be used to express high levels of a cationic peptide. The cationic peptide of Lee et al. does not contain 30% tryptophan but the cationic peptides used in the construct are considered interchangeable and obvious (MPEP 2144.07 for selection of known material based on its suitability for its intended use.) The amendment also raises a new issue of written description since the Specification only provides a description of indolicidin and its analogs and not a description of other cationic sequences with at least 30% tryptophan that have antimicrobial activity.